Insun Development Sdn Bhd v Azali bin Bakar

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-348-1994
LAMIN PCA, EDGAR JOSEPH JR AND MOHD DZAIDDIN FCJJ
11 MAY 1996

Contract *— Building contract — Delay — Sale of single storey dwelling house by developer — Sale and purchase agreement in form prescribed by Schedule E of Housing Developers (Control and Licensing) Regulations 1982 — Developer to deliver vacant possession within 24 calendar months from date of agreement — Late delivery — Purchaser commenced action for liquidated damages more than six years from delivery date — When right of purchaser to sue accrue — Whether action was statute barred — Housing Developers (Control and Licensing) Regulations 1982 Sch E — Limitation Act 1953 s 6(1)*

Contract *— Breach — Action for damages — Date of accrual of right to sue for damages — General rule — Right to sue accrues on date of breach of contract — Whether parties to contract free to postpone date of accrual of their right to sue for damages*

The respondent ('the purchaser') entered into a sale and purchase agreement ('the agreement') on 12 December 1984 with the appellant ('the developer') to purchase a single-storey dwelling house ('the house') to be erected by the developer. The agreement was exactly in the form prescribed in Schedule E to the Housing Developers (Control and Licensing) Regulations 1982 ('the 1982 Regulations'). By cl 18 of the agreement, it was provided that the developer should deliver vacant possession of the house to the purchaser within 24 calendar months from the date of this agreement, failing which the developer should pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of 10% per annum of the purchase price ('the liquidated damages'). It was common ground that the house was not completed and available for delivery until 25 March 1994, and that there had thus been a delay from 12 December 1986 until 25 March 1994 on the part of the developer. The purchaser commenced proceedings by way of originating summons, issued on 31 July 1993, for declarations as to entitlement to the liquidated damages from 12 December 1986 to the date of delivery of possession of the house for breach of contract, or alternatively, under the Housing Developers (Control & Licensing) Act 1966 and the 1982 Regulations. The developer's defence was that the purchaser's claim was founded upon a breach of cl 18 of the agreement, and therefore, his cause of action accrued on the day after the time limited under cl 18 for the delivery of vacant possession, which was on 12 December 1986. On this view, the purchaser had commenced the proceedings more than seven months out of time, and his claim was therefore barred by s 6(1) of the Limitation Act 1953 ('the Act'). The trial judge decided

in favour of the purchaser. The developer appealed. The crucial question before the court was having regard to cl 18 of the agreement, when did the purchaser's right to sue for the agreed liquidated damages for the delay accrue?

Held, allowing the appeal:

(1) It is clear law that in the absence of express contractual provision, the purchaser's right to sue for damages would accrue on the date of the breach of contract (see p 196H); *Nasri v Mesah* [1971] 1 MLJ 32, *Reeves v Butcher* [1891] 2 QB 509 and *Gibbs v Guild* (1881–1882) 8 QBD 296 followed.

(2) However, the parties to a contract are free to regulate or modify their rights in the event of breach thereof in such a manner as to postpone the date of accrual of their right to sue for damages (see p 196I).

(3) The agreement, by cl 18(2), provided for a formula for the calculation of liquidated damages which defined the *terminus a quo* (the opening date) but not the *terminus ad quem* (the closing date). Hence, the general rule applied. It followed that the purchaser's right of action for damages for breach of contract, accrued on the date of the breach which, in this case, was the day after the time limited under cl 18(2) for the delivery of vacant possession, that is to say, on 12 December 1986. Accordingly, the purchaser, having commenced proceedings only on 31 July 1993, was more than seven months out of time. The purchaser's claim was, therefore, statute-barred under s 6(1) of the Act (see p 197G–I); *Loh Wai Lian v SEA Housing Corp Sdn Bhd* [1987] 2 MLJ 1 (PC) distinguished.

[Bahasa Malaysia summary

Pada 12 Disember 1984, penentang ('pembeli') telah mengikat suatu perjanjian jual beli ('perjanjian tersebut') dengan perayu ('pemaju') untuk membeli sebuah rumah kediaman satu tingkat ('rumah tersebut') yang akan didirikan oleh pemaju. Perjanjian tersebut tepat sekali dalam bentuk seperti yang ditetapkan dalam Jadual E kepada Peraturan-peraturan Pemaju Perumahan (Kawalan dan Pelesenan) 1982 ('Peraturan-peraturan 1982'). Menurut fasal 18 perjanjian tersebut, ianya diperuntukkan bahawa pemaju harus menghantar-serah milikan kosong rumah itu kepada pembeli dalam tempoh 24 bulan kalendar dari tarikh perjanjian ini, dan kegagalan berbuat demikian akan menyebabkan pemaju membayar ganti rugi jumlah tertentu dengan segera kepada pembeli, dan ia akan dikira dari sehari ke sehari pada kadar 10% setahun atas harga belian ('ganti rugi jumlah tertentu tersebut'). Adalah tidak boleh dinafikan bahawa rumah tersebut tidak siap dan tidak boleh dihantar-serah sehingga 25 Mac 1994, dan oleh itu terdapatnya kelewatan dari 12 Disember

1986 hingga 25 Mac 1994 pada pihak pemaju. Pembeli telah memulakan prosiding melalui saman pemula, yang dikeluarkan pada 31 Julai 1993, untuk deklarasi terhadap hak untuk ganti rugi jumlah tertentu tersebut dari 12 Disember 1986 hingga tarikh hantar-serah milikan rumah itu bagi kemungkiran kontrak, atau secara alternatif, di bawah Akta Pemaju Perumahan (Kawalan dan Pelesenan) 1966 dan Peraturan-peraturan 1982. Pembelaan pemaju ialah bahawa tuntutan pembeli adalah berasaskan kemungkiran fasal 18 perjanjian tersebut, dan ini bermakna bahawa kausa tindakannya terakru pada hari selepas tempoh yang dihadkan di bawah fasal 18 untuk hantar-serah milikan kosong, iaitu pada 12 Disember 1986. Mengikut pandangan ini, pembeli telah memulakan prosiding lebih daripada tujuh bulan di luar had masa, dan tuntutannya dengan demikian dilarang oleh s 6(1) Akta Had Masa 1953 ('Akta tersebut'). Hakim perbicaraan telah membuat keputusan yang memihak kepada pembeli. Pemaju membuat rayuan. Persoalan penting yang harus dipertimbangkan oleh mahkamah ialah: berkenaan dengan fasal 18 perjanjian tersebut, bilakah hak pembeli untuk mendakwa bagi ganti rugi jumlah tertentu yang disetujui atas kelewatan terakru?

Diputuskan, membenarkan rayuan itu:

(1) Adalah merupakan undang-undang mantap bahawa jika tidak terdapat peruntukan kontraktual nyata, hak pembeli untuk mendakwa bagi ganti rugi terakru pada tarikh kemungkiran kontrak itu (lihat ms 196H); *Nasri v Mesah* [1971] 1 MLJ 32, *Reeves v Butcher* [1891] 2 QB 509 dan *Gibbs v Guild* (1881–1882) 8 QBD 296 diikut.

(2) Namun demikian, pihak-pihak kepada suatu kontrak adalah bebas untuk mengawal atau mengubah suai hak-hak mereka dalam keadaan di mana kemungkiran berlaku, secara penangguhan tarikh apabila hak mereka untuk mendakwa bagi ganti rugi terakru (lihat ms 196I).

(3) Perjanjian tersebut, menerusi fasal 18, memperuntukkan satu rumusan untuk pengiraan ganti rugi jumlah tertentu yang mentakrifkan *terminus a quo* (tarikh pembukaan) tetapi bukan *terminus ad quem* (tarikh penutupan). Ini bermakna rukun am terpakai. Dengan demikian, hak tindakan pembeli untuk ganti rugi bagi kemungkiran kontrak terakru pada tarikh kemungkiran yang mana, dalam kes ini, adalah hari selepas tempoh yang dihadkan di bawah fasal 18(2) untuk hantar-serah milikan kosong, iaitu pada 12 Disember 1986. Ekoran itu, pembeli yang memulakan prosiding hanya pada 31 Julai 1993 telah lewat lebih daripada tujuh bulan selepas tempoh yang dihadkan. Oleh yang demikian, tuntutan pembeli adalah dilarang oleh statut di bawah s 6(1) Akta itu (lihat ms 197G–I); *Loh Wai Lian v SEA Housing Corp Sdn Bhd* [1987] 2 MLJ 1 (PC) dibeza.

A **Notes**

For cases on building contracts, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1245–1337.

For cases on breach of contracts, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1185–1242.

B **Cases referred to**

Central Electricity Generating Board v Halifax Corp [1962] 3 All ER 915

Gibbs v Guild (1881–1882) 8 QBD 296

Loh Wai Lian v SEA Housing Corp Sdn Bhd [1984] 2 MLJ 280

C *Loh Wai Lian v SEA Housing Corp Sdn Bhd* [1987] 2 MLJ 1

Monckton v Payne [1899] 2 QB 603

Nasri v Mesah [1971] 1 MLJ 32

Reeves v Butcher [1891] 2 QB 509

Turner v Midland Railway Co [1911] 1 KB 832

D **Legislation referred to**

Housing Developers (Control and Licensing) Act 1966

Housing Developers (Control and Licensing) Regulations 1982 reg 12(1)

E Housing Developers (Control and Licensing) Rules 1970 r 12(1)(r)

Limitation Act 1953 s 6(1)

Limitation Ordinance 1953 s 6(1)

Appeal from: Originating Summons No 24–541 of 1993 (High Court, Johor Bahru)

F

Zaki Tun Azmi (*Susamma Thomas* with him)(*Rashid & Lee*) for the appellant.

N Jegatheeson (*John Ang & Jega*) for the respondent.

G *Cur Adv Vult*

Edgar Joseph Jr FCJ (delivering the judgment of the court): This is an appeal from the judgment of the High Court, Johor Bahru, ordering that judgment be entered in favour of the plaintiff Azali bin Bakar, the purchaser ('the purchaser') under a sale and purchase agreement dated 12 December 1984 ('the agreement') H of a single-storey dwelling house ('the house') to be erected by the defendant Insun Development Sdn Bhd, the corporate licensed developer ('the vendor'). The agreement was in the form prescribed in the Schedule to the Housing Developers (Control and Licensing) Regulations 1982 ('the 1982 Regulations').

More particularly, the purchaser's claim by way of originating I summons issued on 31 July 1993 was for a declaration as to entitlement to agreed liquidated damages for breach of contract, calculated at the rate of 10% per annum on a daily basis on the purchase price of RM49,725 from

12 December 1986 to date of delivery of possession of the house. Alternatively, the purchaser's claim was for a declaration as to entitlement to liquidated damages as aforesaid under the Housing Developers (Control & Licensing) Act 1966, and the regulations made thereunder, to wit, the 1982 Regulations. In the event, the judge held that the purchaser was entitled to the primary declaration prayed for and entered judgment in his favour accordingly. The essential facts may be shortly stated. The agreement was dated 12 December 1984 and by cl 18 thereof, it was provided as follows:

> 18(1) The said building shall be completed by the vendor and vacant possession delivered to the purchaser within twenty-four (24) calendar months from the date of this agreement.
>
> (2) If the vendor fails to deliver vacant possession of the said building in time the vendor shall pay immediately to the purchaser liquidated damages to be calculated from day to day at the rate of ten per centum (10%) per annum of the purchase price.

It was common ground that the house was not completed and available for delivery until 25 March 1994, and that there had thus been a delay from 12 December 1986 until 25 March 1994 on the part of the vendor in delivering vacant possession of the same.

A demand for agreed liquidated damages by the purchaser having been refused by the vendor, the former commenced proceedings by way of the originating summons aforesaid for the declarations aforesaid and for consequential reliefs.

The vendor's defence was that the purchaser's claim was barred by s 6(1) of the Limitation Act 1953. More particularly, it was contended that as the purchaser's claim was founded upon a breach of contract, that is to say, of cl 18, his cause of action accrued on the day following the time limited under the agreement for completion and delivery of vacant possession of the house. On this view, the purchaser had commenced the proceedings aforesaid more than seven months out of time and his claim was therefore barred by limitation.

In giving judgment for the purchaser, the judge relied heavily on the Malaysian Privy Council decision in *Loh Wai Lian v SEA Housing Corp Sdn Bhd* [1987] 2 MLJ 1. It follows that the point of central importance to this appeal is whether the present case is governed by the judgment of the Privy Council in *Loh Wai Lian*, as the judge thought.

In *Loh Wai Lian*'s case, by a contract in writing dated and executed on 18 March 1974, the plaintiff/buyer had agreed to purchase, and the defendant/developer — a corporate licensed housing developer — had agreed to sell, a shophouse to be constructed by the developer. By cl 17 of the contract it was provided as follows:

> Subject to cl 32 hereof and/or to any extension or extensions of time as may be allowed by the controller the said building shall be completed and ready for delivery of possession to the purchaser within eighteen (18) calendar

A months from the date of this agreement. Provided always that if the said building is not completed and ready for delivery of possession to the purchaser within the aforesaid period then the vendor shall pay to the purchaser agreed liquidated damages calculated from day to day at the rate of eight per centum (8%) per annum on the purchase price of the said property from such aforesaid date to the date of actual completion and
B delivery of possession of the said building to the purchaser.

The applicable legislation in *Loh Wai Lian* was the Housing Developers (Control and Licensing) Rules 1970 ('the 1970 Rules'), r 12(1)(r) of which provided:

> Every contract of sale shall be in writing and shall contain within its terms
C and conditions provisions to the following effect, namely...

There were then set out 21 matters which were required to be incorporated in the contract of sale, of which the following were relevant for purposes of the case:

> D (o) Provisions specifying the date of delivery of the vacant possession of the housing accommodation to the purchaser which date shall be not later than 18 months after the date of signing of the contract of sale; ...
>
> (r) Provisions binding on the licensed housing developer that he shall indemnify the purchaser for any delay in the delivery of the vacant possession of the housing accommodation. The amount of indemnity
> E shall be calculated from day to day at the rate of not less than eight per centum per annum of the purchase price commencing immediately after the date of delivery of vacant possession as specified in the contract of sale; ...

For reasons which will appear later, it is important to note that cl 17 provided a formula for the computation of the agreed liquidated damages
F which defined not only its *terminus a quo* (its opening date) but also its *terminus ad quem* (its closing date).

In the events which transpired, there had been a delay in the completion of the shophouse and it was not until 7 November 1977 that it was in fact completed. Upon the developer refusing to pay the buyer's
G demand for liquidated damages for late delivery, the plaintiff/buyer had commenced an action against the former for liquidated damages for breach of contract. In O 14 proceedings before the senior assistant registrar, the plaintiff/buyer had succeeded, but on appeal before the judge in chambers, the developer's contention that the plaintiff/buyer's claim was barred by
H limitation by virtue of s 6(1) of the Limitation Ordinance 1953, was upheld and the order for summary judgment set aside.

It was next the plaintiff/buyer's turn to appeal to the Federal Court (see *Loh Wai Lian v SEA Housing Corp Sdn Bhd* [1984] 2 MLJ 280), her contention being that regard being had to the provisions of the proviso to cl 17 of the contract, the cause of action was not complete until the
I shophouse was actually completed and vacant possession given to her and that going by this date, she had commenced proceedings well within the time limited by the statute.

Before the Federal Court, the plaintiff/buyer had relied upon the cases of *Turner v Midland Railway Co* [1911] 1 KB 832, *Central Electricity Generating Board v Halifax Corp* [1962] 3 All ER 915 at p 923 and *Monckton v Payne* [1899] 2 QB 603, which are authorities for the proposition that where the mode of assessing liquidated damages has been agreed, time will not run from the date of the breach but from the date when the damages can be ascertained.

As to the plaintiff/buyer's contention that regard being had to the provisions of the proviso to cl 17, the cause of action was not complete until the shophouse was actually completed and vacant possession given to her, the Federal Court said this (at p 283):

> Such a proposition would in fact mean that if the respondents did not complete the shophouse, accrual of cause of action could be postponed indefinitely. We do not think that the proviso to cl 17 of the agreement could have that effect on the Limitation Ordinance in an action founded on contract. A distinction must clearly be recognized between a cause of action and the relief claimed. The date of completion of the shophouse was only necessary to quantify the maximum relief under cl 17 which could be done subsequently by evidence. It could not constitute an impediment to the cause of action being complete. The breach had occurred on 18 September 1975 giving rise to a complete cause of action, and the accrual of cause of action would not be postponed by temporary lack of evidence pertaining to maximum relief claimable resulting from such breach irrespective of whether the damages claimed were liquidated or unliquidated. In the circumstances of the present case, we would not agree to the proposition that the cause of action was not complete until the shophouse was completed.

As for the cases of *Turner*, *Central Electricity Generating Board* and *Mockton*, the Federal Court distinguished them as follows (at pp 284–285):

> ... cl 17 itself had provided that such damages were to be calculated on a day to day basis from the date of breach with the date of actual completion to be used for the purpose of calculating the maximum days claimable. Thus, even a day after the date of breach of liquidated damages could be ascertained under cl 17. In any event, if the present statement of claim had been filed on or before 17 September 1981, no court could have struck it out as disclosing no cause of action merely because the maximum liquidated damages claimable were not quantified. The action was not an ordinary claim for money due and owing, the sum of which ought to be ascertained.

Not deterred, the plaintiff/buyer pursued her appeal to the Privy Council (see [1987] 2 MLJ 1). The court, which comprised Lord Oliver, Lord Bridge, Lord Templeman, Lord Griffiths and Lord Mackay, unanimously decided in favour of the plaintiff/buyer and allowed the appeal, thereby restoring the order of the senior assistant registrar giving summary judgment.

The crucial point for decision before their Lordships was, of course, when the cause of action did accrue, having regard to the particular contract before them, for it was with effect from that date that time commenced to run for purposes of the Limitation Act 1953.

In considering this question, their Lordships were of the view that it was important, first of all, to identify the true nature of the developer's obligation. This is how their Lordships put it (at p 3):

> Mr Kidwell QC, on the other hand, contended that both the trial judge and the Federal Court were wrong to approach the case on the footing that the claim was a simple claim for liquidated damages for breach of contract. He submitted, and their Lordships agree, that the analysis of the accrual of the appellant's cause of action depends not upon the label which was put upon the sums which the respondent became obliged to pay but upon what, on the proper construction of the contract, was the true nature of the respondent's obligation.

In deciding the question what the true nature of the vendor's obligations was, their Lordships laid much stress on the 1970 Rules and the proviso to cl 17 of the contract of sale. This is how they put it (at p 3):

> The starting point is that this contract is one the terms of which are regulated by statute and which therefore falls to be construed in the light of the statutory provisions to which it was designed to give effect.

Their Lordships then drew attention to the statutory obligation imposed on the developer in these terms:

> Rule 12(1)(r) imposed on the developer the obligation to indemnify the purchaser for any delay in delivery of possession and then went on to provide a formula by which 'the amount of indemnity' was to be calculated. The use of the word 'indemnity' is significant, for in its natural meaning it imports the notion of compensation for a loss already suffered when the compensation is paid (see, for instance, *Yorkshire Electricity Board v British Telecom* [1986] 1 WLR 1029 at p 1034.)

Next, touching on the question how r 12(1)(r), when incorporated, had been modified by the contract of sale, their Lordships said this:

> That rule, when incorporated into the actual contract between the parties, was modified in two ways. First, the 'indemnity' provided for by the rule was translated as 'agreed liquidated damages'. Secondly, the formula for calculation of the indemnity was modified by specifying not only the *terminus a quo* as provided in the rule but also the *terminus ad quem*, that is to say, the date of actual completion and delivery of possession.

Their Lordships then went on to make this observation (at p 4):

> It is, in their Lordships' view, tolerably clear that the only rational purpose of defining a payment to be made by the vendor, by reference to what has become a conventional term, as 'agreed liquidated damages' was to make it clear that the purchaser was not to have any right to any other payment by way of damages in respect of the delay over and above what the vendor was undertaking to pay, for there could not sensibly be any prospect of a sum calculated according to mandatory statutory provisions being held to be irrecoverable as a penalty.

Their Lordships then went on to caution:

> But the description of the amount as 'liquidated damages' cannot in any event be determinative of the date on which the sum is to be payable. The clause has to be reasonably and sensibly construed. The obligation is introduced by the words 'the vendor shall pay' and there follows the calculation of the sum which he is to pay carefully defined by its opening and closing date.

Applying what they considered to be a reasonable and sensible construction of cl 17 of the contract of sale, their Lordships said this:

> The whole tenor of the clause is, in their Lordships' view, that the vendor is assuming as a matter of contract and subject to the occurrence of the condition precedent that the building remains uncompleted on the stipulated date, an express contractual obligation to pay a single sum which cannot become due, because it cannot be ascertained, until the building has been completed and possession can be delivered.

Their Lordships recognized that the general rule was that a purchaser's right of action for damages for breach of contract accrues on the date when the breach occurs. But parties were free to enter into a contract displacing or modifying the general rule, and this is what the parties before their Lordships had done by the incorporation of cl 17 into their contract of sale. Their Lordships accordingly concluded:

> In their Lordships' judgment, the only sensible construction of cl 17 is, as Mr Kidwell has contended, that it imposes an obligation to pay, in substitution for any other right to damages which the purchaser might otherwise have, a single sum to be calculated and ascertained at a particular date and that until that sum has been ascertained it does not become due and cannot be sued for.

First of all, we must point out that in the present case, the agreement is regulated by the 1982 Regulations which, by reg 12(1), provides that every contract for the sale and purchase of housing accommodation shall be in the standard form prescribed in Sch E. The agreement with which we are concerned was, as we have indicated at the outset, exactly in the form prescribed in Sch E with no supplementation.

The crucial question is: regard being had to the provisions of cl 18 of the agreement, when did the purchaser's right to sue for the agreed liquidated damages for the delay accrue?

It is clear law that in the absence of express contractual provision, the purchaser's right to sue for damages would accrue on the date of the breach of contract (see *Nasri v Mesah* [1971] 1 MLJ 32 at p 34; *Reeves v Butcher* [1891] 2 QB 509 at p 511; *Gibbs v Guild* (1881–1882) 8 QBD 296 at p 302). But, the parties to a contract are free to regulate or modify their rights in the event of breach thereof in such a manner as to postpone the date of accrual of their right to sue for damages which, of course, was what had happened in *Loh Wai Lian*.

In the present context, we have to consider whether there is any, and if so what, material difference between the contract of sale in *Loh Wai Lian* and the agreement here.

The obvious difference between the contract of sale in *Loh Wai Lian* and the agreement here which we consider to be most material is this: under the former, the statutory formula for the calculation of the indemnity was modified by expressly stating not only the *terminus a quo* (the opening date) but also the *terminus ad quem* (the closing date), which was the date of actual completion and delivery of possession, whereas under the latter — although there is, by cl 18(2), also a formula for the calculation of liquidated damages — it only specifies the *terminus a quo* but not the *terminus ad quem*. In our view, this difference is a matter of critical substance.

It is obvious from the judgment of the Privy Council in *Loh Wai Lian* that but for the unusual language of cl 17 of the contract of sale, which had provided a formula for the computation of damages payable by the developer to the buyer for delay, by defining not merely the *terminus a quo* (the opening date) required under r 12(1)(r) of the 1970 Rules but also the *terminus ad quem* (the closing date) — not required under r 12(1)(r) — the case would have been differently decided, for their Lordships said this (at p 4):

> If the question is asked 'in the absence of such an express provision when would the purchaser's right of action for damages for breach of contract accrue?', the answer is plainly the date on which the breach occurred. But parties to a contract are, of course, entitled to regulate or modify their rights in the event of breach in any way that they think fit and the accrual of any cause of action then becomes a matter of the correct construction of what they have provided. This appeal raises no point of principle but simply a question of what is the true construction of the contract in which the parties entered.

In our view, for the reasons stated *Loh Wai Lian* is, therefore, readily distinguishable from the present case and accordingly, the judge was, with respect, wrong in holding that it was of decisive importance to the question which arose for decision.

It follows, therefore, that our answer to the crucial question aforesaid is: because the agreement by cl 18(2) had provided for a formula for the calculation of liquidated damages which defined the *terminus a quo* (the opening date) but not the *terminus ad quem* (the closing date), the purchaser's right of action for damages for breach of contract — following the general rule — accrued on the date of the breach which, in this case, was the day after the time limited under cl 18(2) for the delivery of vacant possession, that is to say, on 12 December 1986. Accordingly, the purchaser, having commenced proceedings only on 31 July 1993, was more than seven months out of time. We are thus driven to the inevitable conclusion that the purchaser's claim was statute-barred under the provisions of s 6(1) of the Limitation Act 1953.

The appeal must, therefore, be allowed with costs here and below. The judgment of the court below is set aside, and there will be substituted, in lieu thereof, judgment in favour of the vendor, that is to say, the purchaser is not entitled to the declarations prayed for or either of them, nor to any other reliefs. The deposit will be refunded.

Our human sympathies are for the purchaser, but we are not at liberty to indulge them.

Order accordingly.

Reported by Isabel Liong